

AMENDED IN ASSEMBLY AUGUST 22, 2014

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AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1319

**Introduced by ~~Senator Pavley~~ *Senators Hill, Wolk, and Pavley*
(~~Coauthors: Senators Hill, Jackson, Lara, Leno, and Wolk~~)**

February 21, 2014

~~An act to amend Sections 8670.8, 8670.8.3, and 8670.54 of, and to add Sections 8670.6.5 and 8670.15 to, the Government Code, to amend Section 25364 of the Public Resources Code, and to amend Section 765.5 of the Public Utilities Code, relating to oil spills. An act to add Article 3.9 (commencing with Section 8574.30) to Chapter 7 of Division 1 of Title 2 of the Government Code, relating to hazardous materials transport.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, as amended, **Pavley Hill. Oil spills: oil spill prevention and response. Hazardous materials: railroad tank cars.**

Existing law establishes the Railroad Accident Prevention and Immediate Deployment Force in the California Environmental Protection Agency and designates the force as being responsible for providing immediate onsite response capability in the event of a large-scale release of toxic materials resulting from a surface transportation accident. Existing law requires the agency to develop a state railroad accident prevention and immediate deployment plan, in consultation with specified state entities, other potentially affected state, local, or federal agencies, and affected businesses, and designates the force as being responsible for implementing the plan, acting cooperatively and in concert with existing local emergency response units.

Existing law establishes the Office of Emergency Services within the office of the Governor and under the supervision of the Director of Emergency Services and makes the office responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies. Existing law requires the office to serve as the central point of state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and to coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases.

This bill would create the Regional Railroad Accident Preparedness and Immediate Response Force in the Office of Emergency Services, consisting of specified representatives, and would designate this force as being responsible for providing regional and onsite response capabilities in the event of a release of hazardous materials from a railroad tank car or a railroad accident involving a tank car. This bill would require the office to develop and implement a state regional railroad accident preparedness and immediate response plan, in consultation with specified entities, and requires the plan to become an annex to the state emergency plan. This bill would require the force and the Office of Spill Prevention and Response to coordinate in their respective authorities and responsibilities to avoid any duplication of

effort, ensure cooperation, and promote the sharing of information regarding the risk of discharge of petroleum by rail into state waters.

This bill would require the director to establish a schedule of fees to determine the amount of a fee to be paid by a person owning hazardous materials that are transported by rail in California. The bill would require that the fees be fair, as required by the federal Hazardous Materials Transportation Act, and state the intent of the Legislature that the schedule of fees reflect the proportionate risks to the public safety and environment resulting from a release of different hazardous materials and the expense of preparing to respond to those varying risks. The bill would authorize the director to exempt from the fee a shipment of hazardous materials that meets certain criteria and prohibit the collection of fees in excess of the reasonable regulatory costs to the state. The bill would also require every person who operates a railroad that transports hazardous materials by tank car to register with the board and to remit the fees to the board pursuant to the Fee Collection Procedures Law. The bill would create the Regional Railroad Accident Preparedness and Immediate Response Fund in the State Treasury and would require that all revenues, interest, penalties, and other amounts collected pursuant to the bill's requirements be deposited into the fund, less refunds and reimbursement to the board for expenses incurred in the administration and collection of the fee. The bill would require that moneys in the fund, upon appropriation by the Legislature, be used by the director to pay for planning, developing, and maintaining a capability for emergency response purposes relating to a hazardous materials release from a railroad tank car or a railroad accident involving a tank car, and the creation, support, maintenance, and implementation of the Regional Railroad Accident Preparedness and Immediate Response Force. This bill would limit the amount available for appropriation from the fund to \$10,000,000 in any calendar year.

The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government.~~

~~This bill would authorize the administrator to obtain confidential and other information from the Office of Emergency Services, the State Energy Resources Conservation and Development Commission, and other regulators, as necessary, in order for the administrator to carry out his or her duties, and would require the administrator to develop procedures in handling the obtained information. The bill would require the administrator to obtain and make publicly available, as specified, previously filed information related to the transport of oil through, near, or into communities, as specified.~~

~~(2) Existing law authorizes the administrator, upon request by a local government, to provide a program for training and certification of a local emergency responder designated as a local spill response manager by a local government with jurisdiction over or directly adjacent to waters of the state. Existing law also authorizes the administrator to offer grants to a local government with jurisdiction over or directly adjacent to waters of the state to provide oil spill response equipment to be deployed by a specified local spill response manager and to request an appropriation for this purpose.~~

~~This bill would require the administrator to provide that program, upon request, and offer those grants and request an appropriation for that purpose.~~

~~(3) Existing law establishes the Oil Spill Technical Advisory Committee to provide public input and independent judgment of the actions of the administrator. The committee is composed of 14 members.~~

~~This bill would increase the number of members from 14 to 15 and would require the Governor to appoint an additional member with knowledge of the truck transportation industry.~~

~~(4) Existing law requires, beginning November 1, 2003, and every 2 years thereafter, the State Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission, to adopt an integrated energy policy report that contains an overview of certain topics including specified transportation~~

forecasting and assessment activities. Existing law requires refiners, major marketers of petroleum products, major oil producers, oil transporters, and oil storers to submit specified information during specified periods to the commission. Existing law makes specified information collected by the commission confidential, subject to certain exceptions.

This bill would authorize the commission to disclose specified confidential information to the administrator for oil spill response if the administrator response agrees to keep that information confidential, as specified.

(5) Existing law requires the Public Utilities Commission to establish, by regulation, the inspection of railroad locomotives, equipment, and facilities occur not less frequently than every 120 days, and, in addition to those minimum inspections, that the commission conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration or as the commission determines to be necessary.

This bill would expand those inspections to include railroad bridges and grade crossings over which oil is being transported and oil unloading rail facilities, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.9 (commencing with Section 8574.30)
2 is added to Chapter 7 of Division 1 of Title 2 of the Government
3 Code, to read:
4
5 Article 3.9. Regional Railroad Accident Preparedness and
6 Immediate Response
7
8 8574.30. For purposes of this article, the following terms have
9 the following meanings:
10 (a) "Board" means the State Board of Equalization.
11 (b) "Director" means the Director of Emergency Services.
12 (c) "Fund" means the Regional Railroad Accident Preparedness
13 and Immediate Response Fund established pursuant to Section
14 8574.44.

1 (d) “Hazardous material” means a material that the United
2 States Department of Transportation has designated as a hazardous
3 material for purposes of transportation in Part 172 of Title 49 of
4 the Code of Federal Regulations.

5 (e) “Owner” means the person who has the ultimate control
6 over, and the right to use or sell, the hazardous material being
7 shipped. There is a rebuttable presumption that the shipper,
8 consignor, or consignee of the hazardous material is the owner of
9 the hazardous material. This presumption may be overcome by
10 showing that ownership of the hazardous material rests with
11 someone other than the shipper, consignor, or consignee. Evidence
12 to rebut the presumption may include, but is not limited to,
13 documentation, including a bill of lading, shipping document, bill
14 of sale, or other medium, that shows the ownership of the
15 hazardous material rests in a person other than the shipper,
16 consignor, or consignee.

17 (f) “Person” means an individual, trust, firm, joint stock
18 company, business concern, corporation, including, but not limited
19 to, a government corporation, partnership, limited liability
20 company, and association. “Person” also includes any city, county,
21 city and county, district, commission, the state or any department,
22 agency or political subdivision thereof, and the United States and
23 agencies and instrumentalities, to the extent permitted by law.

24 (g) “Railroad” has the same meaning as defined in Section 229
25 of the Public Utilities Code.

26 (h) “Tank car” means a railroad car or rolling stock designed
27 to transport liquid and gaseous commodities, and includes those
28 railroad cars subject to the requirements of Part 179 (commencing
29 with Section 179.1) of Title 49 of the Code of Federal Regulations,
30 or a successor set of regulations adopted by the United States
31 Department of Transportation.

32 8574.32. (a) The director shall establish a schedule of fees to
33 determine the amount of a fee that shall be paid by each person
34 owning hazardous materials that are transported by rail in
35 California in an amount sufficient to fund the appropriation from
36 the fund pursuant to Section 8574.44, to reimburse the California
37 High-Cost Fund-B Administrative Committee Fund for any moneys
38 loaned, and to maintain a prudent reserve of two months’ operating
39 costs. The fee shall be based on each loaded tank car as described
40 in subdivision (b).

1 **(b) (1)** *Within six months of the director establishing a schedule*
2 *of fees pursuant to subdivision (a), the fee shall be imposed on a*
3 *person owning hazardous material at the time that hazardous*
4 *material is transported by loaded tank car. The fee is based on*
5 *each loaded tank car.*

6 **(A)** *If the loaded tank car enters the state from outside this state,*
7 *the fee is imposed on the owner of the hazardous material at the*
8 *time the loaded tank car enters this state. The railroad shall collect*
9 *the fee from the owner of the hazardous material and shall pay*
10 *the fee to the board.*

11 **(B)** *If the tank car is loaded within this state the fee is imposed*
12 *upon the loading of hazardous material into the tank car for*
13 *transport in or through this state. The railroad shall collect the*
14 *fee from the owner of the hazardous material at the time the tank*
15 *car is loaded and shall pay the fee to the board.*

16 **(2)** *The fees shall be paid to the board by the railroad at the*
17 *time the return is required to be filed, as specified in Section*
18 *8574.38, based on the number of loaded hazardous material tank*
19 *cars transported within the state.*

20 **(3)** *Any fees collected from an owner of hazardous materials*
21 *pursuant to this section that have not been remitted to the board*
22 *shall be deemed a debt owed to the state by the person required*
23 *to collect and remit fees.*

24 **(4)** *The owner of the hazardous material is liable for the fee*
25 *until it has been paid to the board, except that payment to a*
26 *railroad registered under this article is sufficient to relieve the*
27 *owner from further liability for the fee.*

28 **(5)** *Any owner or railroad who has paid fees pursuant to this*
29 *section shall not be assessed any additional fees under this section*
30 *for further transporting the same hazardous materials in the same*
31 *tank cars on a different railroad within the state.*

32 **(c)** *The fee shall be fair, as required by subsection (f) of Section*
33 *5125 of Title 49 of the United States Code and federal regulations*
34 *(49 CFR 107.202(e)). It is the intent of the Legislature that the fee*
35 *reflect the proportionate risks to the public safety and environment*
36 *resulting from a release of different hazardous materials and the*
37 *expense of preparing to respond to those varying risks. The director*
38 *may exempt from the fee those shipments of hazardous materials*
39 *that do not merit inclusion in the state regional railroad accident*
40 *preparedness and immediate response plan developed pursuant*

1 to Section 8574.46 and those shipments of hazardous materials
2 that do not merit additional governmental preparation to respond
3 to their release in the event of a railroad accident.

4 (d) The fee shall not result in the collection of moneys that
5 exceed the reasonable regulatory costs to the state for the purposes
6 specified in subdivision (e) of Section 8574.44. The director shall
7 set the fee consistent with Section 3 of Article XIII A of the
8 California Constitution.

9 (e) The director shall be responsible for reporting fee
10 information to the federal Secretary of Transportation pursuant
11 to paragraph (2) of subsection (f) of Section 5125 of Title 49 of
12 the United States Code.

13 (f) The director may authorize payments of fees through
14 contributions in kind of equipment, materials, or services.

15 8574.34. Every person who operates a railroad that transports
16 hazardous materials by tank car shall register with the board
17 pursuant to Section 55021 of the Revenue and Taxation Code.

18 8574.36. The fee imposed pursuant to Section 8574.32 shall
19 be administered and collected by the board in accordance with
20 the Fee Collection Procedures Law (Part 30 (commencing with
21 Section 55001) of Division 2 of the Revenue and Taxation Code).
22 For purposes of this section, the references in the Fee Collection
23 Procedures Law to “fee” shall include the fee imposed by this
24 article, and references to “feepayer” shall include a person
25 required to pay the fee imposed by this article.

26 8574.38. The return required to be filed pursuant to Section
27 55040 of the Revenue and Taxation Code shall be prepared and
28 filed by the person required to register with the board, using
29 electronic media, in the form prescribed by the board, and shall
30 contain that information the board deems necessary or appropriate
31 for the proper administration of this article and the Fee Collection
32 Procedures Law. The return shall be filed on or before the last
33 day of the calendar month following the calendar quarter to which
34 it relates, together with a remittance payable to the board for the
35 fee amount due for that period. Returns shall be authenticated in
36 a form or pursuant to methods as may be prescribed by the board.

37 8574.40. Notwithstanding the petition for redetermination and
38 claim for refund provisions of the Fee Collection Procedures Law
39 (Article 3 (commencing with Section 55081) of Chapter 3 of, and
40 Article 1 (commencing with Section 55221) of Chapter 5 of, Part

1 30 of Division 2 of the Revenue and Taxation Code), the board
2 shall not:

3 (a) Accept or consider a petition for redetermination of fees
4 determined under this article if the petition is founded upon the
5 grounds that the tank car content is or is not a hazardous material.
6 The board shall forward to the director any appeal of a
7 determination that is based on the grounds that the tank car content
8 is or is not a hazardous material.

9 (b) Accept or consider a claim for refund of fees paid pursuant
10 to this chapter if the claim is founded upon the grounds that the
11 tank car content is or is not a hazardous material. The board shall
12 forward to the director any claim for refund that is based on the
13 grounds that the tank car content is or is not a hazardous material.

14 8574.42. (a) The board may prescribe, adopt, and enforce
15 regulations relating to the administration and enforcement of this
16 article.

17 (b) The board may prescribe, adopt, and enforce any emergency
18 regulations, as necessary, to implement this article. Except as
19 provided in Section 8574.44, any emergency regulation prescribed,
20 adopted, or enforced pursuant to this article shall be adopted
21 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
22 1 of Division 3 of Title 2 and, for purposes of that article, including
23 Section 11349.6, the adoption of the regulation is an emergency
24 and shall be considered by the Office of Administrative Law as
25 necessary for the immediate preservation of the public peace,
26 health and safety, and general welfare.

27 8574.44. (a) The Regional Railroad Accident Preparedness
28 and Immediate Response Fund is hereby created in the State
29 Treasury.

30 (b) All revenues, interest, penalties, and other amounts collected
31 pursuant to this article shall be deposited into the fund, less refunds
32 and reimbursement to the board for expenses incurred in the
33 administration and collection of the fee.

34 (c) The adoption of regulations pursuant to this section shall
35 be considered by the Office of Administrative Law as an emergency
36 necessary for the immediate preservation of the public peace,
37 health and safety, and general welfare. Notwithstanding Chapter
38 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
39 Title 2, emergency regulations adopted by the director and the
40 board pursuant to this section shall be filed with, but not repealed

1 *by, the Office of Administrative Law and shall remain in effect*
2 *until revised or repealed by the director.*

3 *(d) The fund shall be used to reimburse the California High-Cost*
4 *Fund-B Administrative Committee Fund for any moneys loaned*
5 *from the California High-Cost Fund-B Administrative Committee*
6 *Fund to the fund to pay for the Office of Emergency Service's*
7 *administrative costs associated with implementation of the fee*
8 *pursuant to this article.*

9 *(e) All moneys remaining in the fund after reimbursement of*
10 *the California High-Cost Fund-B Administrative Committee Fund*
11 *pursuant to subdivision (d) shall, upon appropriation by the*
12 *Legislature, be used by the director to pay for the following*
13 *purposes related to the transportation of hazardous materials:*

14 *(1) Planning, developing, and maintaining a capability for*
15 *emergency response to railroad accidents involving tank cars*
16 *carrying hazardous materials, including the risks of explosions*
17 *and fires.*

18 *(2) Planning, developing, and maintaining a capability for*
19 *emergency response to releases of hazardous materials from tank*
20 *cars, including reducing the harmful effects of exposure of those*
21 *materials to humans and the environment.*

22 *(3) Creation, support, maintenance, and implementation of the*
23 *Regional Railroad Accident Preparedness and Immediate Response*
24 *Force created by Section 8574.46.*

25 *(4) Acquisition and maintenance of specialized equipment and*
26 *supplies used to respond to a hazardous materials release from a*
27 *railroad tank car or a railroad accident involving a tank car.*

28 *(5) Support of specialized training facilities to prepare for and*
29 *respond to a hazardous materials release from a railroad tank car*
30 *or a railroad accident involving a tank car.*

31 *(6) Creation and support of a regional, state level, and local*
32 *emergency response team to provide immediate onsite response*
33 *capabilities in the event of large scale releases of hazardous*
34 *materials from a railroad tank car or a railroad accident involving*
35 *a tank car.*

36 *(7) Support for specialized training for state and local*
37 *emergency response officials in techniques for prevention of, and*
38 *response to, release of hazardous materials from a railroad tank*
39 *car or a railroad accident involving a tank car.*

1 (f) *The amount available for appropriation from the fund shall*
2 *not exceed ten million dollars (\$10,000,000) in any calendar year.*

3 8574.46. (a) *The Regional Railroad Accident Preparedness*
4 *and Immediate Response Force is hereby created in the Office of*
5 *Emergency Services. The force shall be responsible for providing*
6 *regional and onsite response capabilities in the event of a release*
7 *of hazardous materials from a railroad tank car or a railroad*
8 *accident involving a tank car and for implementing the state*
9 *regional railroad accident preparedness and immediate response*
10 *plan for releases of hazardous materials from a railroad tank car*
11 *or a railroad accident involving a tank car. This force shall act*
12 *cooperatively and in concert with existing local emergency*
13 *response units pursuant to Article 9.5 (commencing with Section*
14 *8607). The force shall consist of representatives of all of the*
15 *following:*

- 16 (1) *Department of Fish and Wildlife.*
- 17 (2) *California Environmental Protection Agency.*
- 18 (3) *State Air Resources Board.*
- 19 (4) *Department of Resources Recycling and Recovery.*
- 20 (5) *California regional water quality control boards.*
- 21 (6) *Department of Toxic Substances Control.*
- 22 (7) *Department of Pesticide Regulation.*
- 23 (8) *Office of Environmental Health Hazard Assessment.*
- 24 (9) *State Department of Public Health.*
- 25 (10) *Department of the California Highway Patrol.*
- 26 (11) *Department of Food and Agriculture.*
- 27 (12) *Department of Forestry and Fire Protection.*
- 28 (13) *Department of Parks and Recreation.*
- 29 (14) *Public Utilities Commission.*
- 30 (15) *State Fire Marshal.*
- 31 (16) *Emergency Medical Services Authority.*
- 32 (17) *California National Guard.*
- 33 (18) *Any other potentially affected state, local, or federal*
34 *agency, as determined by the director.*

35 (b) *The Office of Emergency Services shall develop a state*
36 *regional railroad accident preparedness and immediate response*
37 *plan in cooperation with all of the entities listed in paragraphs*
38 *(1) to (18), inclusive, of subdivision (a) and the plan shall become*
39 *an annex to the state emergency plan.*

1 (c) (1) *The Legislature finds and declares that the state has a*
2 *comprehensive program through the Office of Spill Prevention*
3 *and Response to prevent and prepare for the risk of a significant*
4 *discharge of petroleum into state waters, including a discharge*
5 *caused by the transportation of petroleum by rail. The Legislature*
6 *further finds and declares that the Regional Accident Preparedness*
7 *and Immediate Response Force is focused on the emergency*
8 *response for railroad accidents and tank car discharges involving*
9 *all designated hazardous materials regardless of where the*
10 *accident or discharge takes place.*

11 (2) *The Regional Accident Preparedness and Immediate*
12 *Response Force and Office of Spill Prevention and Response shall*
13 *coordinate in their respective authorities and responsibilities to*
14 *avoid any duplication of effort, ensure cooperation, and promote*
15 *the sharing of information regarding the risk of discharge of*
16 *petroleum by rail into state waters.*

17 SEC. 2. *No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

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<p>All matter omitted in this version of the bill appears in the bill as amended in the Assembly, August 19, 2014. (JR11)</p>
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